

## **Judicial Opinions of JUSTICE PETER G. VERNIERO**

### **Majority Opinions for the Court**

1. **Lacey Municipal Utilities Authority v. New Jersey DEP**

162 N.J. 30 (1999)

Holding: The one-year period within which a public entity must file a claim with the Spill Fund begins on the date on which the entity commits itself through official act to incurring damages compensable by the Spill Fund. Because there were no clear regulations defining when damage is discovered when Lacey made its claims, Lacey's claims should proceed.

2. **Lapka v. Porter Hayden**

162 N.J. 545 (2000)

Holding: Because the record unquestionably establishes Lapka's awareness of his exposure to asbestos and its possible cause of or contribution to his injury more than two years before he filed his action for damages, the discovery rule does not operate to delay the accrual of his cause of action, and his suit is thus time-barred by the two-year statute of limitations.

3. **State v. Lark**

163 N.J. 294 (2000)

Holding: The Appellate Division correctly concluded that there was no sustainable basis for a warrantless search of defendant's automobile.

4. **Schneider v. Simonini** (partial majority on issue of qualified immunity)

163 N.J. 336 (2000)

Holding: Probable cause to arrest Schneider did not exist, but because Simonini could reasonably have believed there was probable cause, he is entitled to qualified immunity.

5. **State v. Presha**

163 N.J. 304 (2000)

Holding: Courts should consider the totality of circumstances when reviewing the admissibility of confessions by juveniles in custody. The absence of a parent or legal guardian from the interrogation area is a highly significant fact when considering whether a juvenile's waiver of rights was knowing, intelligent, and voluntary. Giving added weight to the mother's absence from the interrogation of the juvenile in this case, the State has demonstrated that his waiver of rights was knowing, intelligent, and voluntary. Also holding that, when a parent or legal guardian is absent from an interrogation of a juvenile under the age of fourteen, any confession resulting from that interrogation should be deemed inadmissible as a matter of law, unless the adult was unwilling to be present or truly unavailable.

6. **Golden v. County of Union**

163 N.J. 420 (2000)

Holding: The employee manual's provisions requiring a hearing prior to termination are not enforceable as to assistant prosecutors because the statute unambiguously designates assistant prosecutors as at-will employees.

7. **Wanetick v. Gateway Mitsubishi**

163 N.J. 484 (2000)

Holding: Trial courts must instruct jurors concerning the ultimate outcome of their verdicts in cases arising under the Consumer Fraud Act.

8. **State v. Cooke**

163 N.J. 657 (2000)

Holding: Under New Jersey law, there must be both probable cause and exigent circumstances to sustain a warrantless search of a motor vehicle. Those requirements were met in this case, where the observations of the police confirmed the informant's tip and the vehicle was readily mobile and accessible to third persons, who could have moved the car or removed or destroyed its contents.

9. **Cavanaugh v. Skil Corp.**

164 N.J. 1 (2000)

Holding: Although the trial court committed error in charging the jury on the state-of-the-art defense when defendant had not asserted it, that error did not unfairly prejudice the defendant-manufacturer because the jury correctly understood that plaintiff had the ultimate burden to prove that defendant's product was defective. The judgment of the Appellate Division, as modified, is affirmed substantially for the reasons set forth in its opinion.

10. **Kurzke v. Nissan Motor Corporation**

164 N.J. 159 (2000)

Holding: It was premature and an abuse of discretion for the trial court to conclude that Nissan and the other defendants had satisfied the burden of showing plaintiff Kurzke's choice of forum in New Jersey to be demonstrably inappropriate.

11. **Cox v. RKA Corporation**

164 N.J. 487 (2000)

Holding: Unrecorded vendee liens for payments voluntarily made by the vendee after the mortgage lender properly records its mortgage do not have priority over the mortgage. This decision will be applied prospectively; therefore, plaintiffs' vendee lien will be accorded priority over Roebbling's mortgage interest for the full amount of all payments advanced by plaintiffs against the contract price.

12. **Estate of Roach v. TRW, Inc.**

164 N.J. 598 (2000)

Holding: Plaintiff was not required to prove a defined violation of public policy to win a jury verdict under sections 3a. and 3c. of the Conscientious Employee Protection Act; plaintiff provided sufficient proofs to the jury that his complaints to his employer about his co-employees' conduct were protected under CEPA and that his discharge was motivated by those complaints.

13. **Dynasty v. The Princeton Insurance Company**  
165 N.J. 1 (2000)  
Holding: The trial court committed reversible error by failing to instruct the jury that the insurance company could not be found liable for the loss if the fire hazard was increased by any means within the control or knowledge of the insured.
14. **State v. Robinson**  
165 N.J. 32 (2000)  
Holding: A trial court may but is not required to refer to the facts of the case when providing instructions on identification. Considering the instructions in their entirety, the context of the evidence, and the arguments of trial counsel, the jury charge here was fair.
15. **Rocci v. Ecole Secondaire**  
165 N.J. 149 (2000)  
Holding: Defendant's allegedly defamatory letter, which implicated the public interest, requires heightened free-speech protections; thus, reputational or pecuniary harm may not be presumed absent a showing of actual malice as defined under New York Times v. Sullivan.
16. **State v. Zhu**  
165 N.J. 544 (2000)  
Holding: The heightened security measures in this case did not deprive the defendants of a fair trial before an impartial jury.
17. **Ali v. Rutgers**  
166 N.J. 280 (2000)  
Holding: In cases in which operative facts arise both before and after the date of the decision in Montells v. Haynes, aggrieved parties must file their claims under the LAD prior to the expiration of the six-year limitations period or within two years from the date of this opinion, whichever is earlier.
18. **State v. Maisonet**  
166 N.J. 9 (2001)  
Holding: Defendant's dirty and disheveled appearance created an unacceptable risk that the jury's verdict was tainted, and that verdict must be set aside. Alternatively, the doctrine of fundamental fairness would also warrant reversal on the facts presented.
19. **IMO Trust Created by John Seward Johnson**  
166 N.J. 340 (2001)  
Holding: The adjudication of paternity in the 1965 divorce proceedings bars any third-party collateral attack on Jenia Johnson's parentage. Jenia is an eligible beneficiary under the 1961 trust.
20. **Alderiso v. The Medical Center of Ocean County**  
167 N.J. 191 (2001)

Holding: When an employer's alleged conduct consists of a wrongful termination, the employee's cause of action under the Conscientious Employee Protection Act accrues on the date of actual discharge.

21. **Packard-Bamberger & Co. v. Collier**

167 N.J. 427 (2001)

Holding: A successful claimant in an attorney-misconduct case may recover reasonable counsel fees incurred in prosecuting that action.

22. **State v. Koskovich**

168 N.J. 448 (2001)

Holding: There were no errors during the guilt phase that warrant reversal of defendant's capital convictions. In the penalty phase, however, the trial court's erroneous jury instructions in three areas – evaluation of the victim-impact evidence, defendant's likely non-capital sentences, and the balancing of aggravating and mitigating factors – collectively warrant reversal of defendant's death sentence.

23. **Garfinkel v. Morristown Obstetrics & Gynecology Assoc.**

168 N.J. 124 (2001)

Holding: The language of the arbitration clause in the agreement between Peter Garfinkel, M.D., and Morristown Obstetrics & Gynecology Associates, P.A., is ambiguous and does not constitute a waiver of Garfinkel's statutory rights under the Law Against Discrimination. Garfinkel may proceed with his employment discrimination action, and the related common-law claims, in the Law Division.

24. **Zacarias v. Allstate Insurance Company**

168 N.J. (2001)

Holding: The terms of the Allstate boatowner's policy, which contained an intra-family coverage exclusion, were unambiguous and should be enforced.

25. **State v. DeLuca**

168 N.J. 626 (2001)

Holding: Under the facts and circumstances of this case, the warrantless search of defendant's pager was permissible under the federal and State constitutions due to exigent circumstances.

26. **State v. Johnson**

168 N.J. 608 (2001)

Holding: The record did not adequately justify the issuance of a no-knock warrant in this case.

27. **IMO Petition of American Water for an Increase in Rates**

169 N.J. 181 (2001)

Holding: The New Jersey Board of Public Utilities' 50/50 sharing policy, which permits a utility to include half of its charitable contributions as operating expenses for purposes of calculating its service rates, is arbitrary, lacks a sufficient basis in the record, and thus constitutes unreasonable agency action; no portion of a utility's charitable contributions may be subsidized by the utility's captive ratepayers.

28. **State v. Sullivan**  
169 N.J. 204 (2001)  
Holding: The two controlled drug purchases, along with the police corroboration of the informant's tip, adequately justified a finding of probable cause for the police to obtain a warrant to search the apartment and the defendant.
29. **State v. Ravotto**  
169 N.J. 227 (2001)  
Holding: Applying the Fourth Amendment of the Constitution of the United States and Article I, paragraph 7 of the New Jersey Constitution, the force used by the police to extract defendant's blood was unreasonable under the totality of the circumstances.
30. **Campbell v. New Jersey Racing Commission**  
169 N.J. 579 (2001)  
Holding: There is ample evidence in the record to support the Commission's determination that the testing of Ramses for tCO<sub>2</sub> yielded a valid measurement in excess of the regulatory limit.
31. **Harleysville Insurance v. Garitta**  
170 N.J. 223 (2001)  
Holding: The trial court correctly granted summary judgment in favor of Harleysville Insurance Company, which sought to disclaim coverage on the basis of an "intentional act" exclusion in a homeowner's policy, the insurer having demonstrated that the insured intended to cause some injury, and that the actual injury that led to the victim's death was an inherently probable consequence of the insured's actions.
32. **Amoresano v. Laufgas**  
171 N.J. 532 (2002)  
Holding: The Court affirms the Appellate Division in respect of the Rule 1:10-1 action and the second Rule 1:10-2 action. The Court reverses the order of contempt in respect of the first Rule 1:10-2 action.
33. **Clymer v. Summit Bancorp.**  
171 N.J. 57 (2002)  
Holding: The one-year dormancy period set forth in Section 41.2 of the Uniform Unclaimed Property Act applies to the transfer to the State by the trustee bank of unclaimed principal and interest arising from bonds issued by various governmental entities.
34. **State v. Stott**  
171 N.J. 343 (2002)  
Holding: The warrantless search of Stott's room in this psychiatric hospital was improper, and the seized drugs must be suppressed. Given the absence of Miranda warnings, Stott's statements also must be suppressed.
35. **In the Interest of J.D.H.**

171 N.J. 475 (2002)

Holding: The juvenile's statements are admissible, because the juvenile was not in custody and there are no other reasons to doubt that the statements were made voluntarily. The Wiretap Act does not prohibit intercepting communications of juvenile suspects.

36. **First Resolution v. Seker**

171 N.J. 502 (2002)

Holding: Plaintiff's proof of service certification was adequate under the Rules of Court. Morristown Memorial Hospital v. Tureo, 329 N.J. Super. 154 (App. Div.), certif. denied, 165 N.J. 487 (2000), is overruled and the Civil Practice Committee is directed to make appropriate rule recommendations consistent with this opinion.

37. **State v. Carreker**

172 N.J. 100 (2002)

Holding: There is no entitlement to gap-time credit for time served on an out-of-state sentence.

38. **State v. Rodriguez**

172 N.J. 117 (2002)

Holding: Defendant was the subject of an investigative detention and the totality of the circumstances did not justify it.

39. **Musikoff v. Jay Parrino's The Mint**

172 N.J. 133 (2002)

Holding: The Attorney's Lien Act, N.J.S.A. 2A:13-5, does not require an attorney to file a petition to acknowledge and enforce an attorney's lien prior to settlement or judgment in the matter that has given rise to the lien itself.

40. **Wade v. Kessler Institute**

172 N.J. 327 (2002)

Holding: The trial court committed plain error when it instructed the jury to determine the existence of an implied covenant, because the parties did not contest that issue. It also erred by submitting the issue of the implied covenant of good faith to the jury.

41. **In re P.S.E.& G. Shareholder Litigation**

173 N.J. 258 (2002)

Holding: The Court adopts the modified business judgment rule as the standard for evaluating whether a corporation's board of directors responded properly in rejecting a shareholder's demand or in deciding to terminate legal action on the corporation's behalf. The modified business judgment rule places an initial burden on directors to demonstrate that they acted reasonably, in good faith, and in a disinterested fashion in arriving at their decision. The lower courts properly applied that standard when dismissing the derivative litigation in this case.

42. **Shepherd v. Hunterdon Developmental Center**

174 N.J. 1 (2002)

Holding: Under the continuing-violation doctrine, Shepherd and Saylor's hostile-work environment claims accrued within the two years of filing their complaint. Those claims present material issues of fact such that summary judgment should not have been granted. In addition, no reasonable jury could find that the facts presented support Saylor's constructive discharge claim; therefore, that claim was properly dismissed.

43. **State v. DiFrisco**

174 N.J. 195 (2002)

Holding: The representation provided by DiFrisco's trial attorneys did not constitute ineffective assistance of counsel.

44. **State v. Mendez**

175 N.J. 201 (2002)

Holding: The State can charge both drug possession and tampering with physical evidence (CDS) when the accused destroys all or part of the CDS.

45. **State v. Brooks**

175 N.J. 215 (2002)

Holding: Officials who implement the PTI process may draw limited inferences from an applicant's criminal history that contains dismissed offenses. The prosecutor's rejection of this PTI application based on Brook's juvenile and adult history, the facts surrounding the present offenses, and other permissible factors, was not a patent and gross abuse of discretion.

46. **State v. Simbara**

175 N.J. 37 (2002)

Holding: The State must produce for cross-examination the laboratory employee or analyst who prepared the certificate proffered by the State pursuant to N.J.S.A. 2C:35-19 to establish the nature and quantity of an alleged controlled dangerous substance whenever a defendant timely invokes the right to confront that witness in a challenge to the certificate.

47. **State v. Harvey**

176 N.J. 522 (2003)

Holding: Harvey's allegation of prosecutorial misconduct does not require the disqualification of attorneys from the Middlesex County prosecutor's office.

48. **Leodori v. Cigna**

175 N.J. 293 (2003)

Holding: The unambiguous waiver-of-rights provision set forth in defendant CIGNA Corporation's employee handbook, requiring all of its employees to resolve employment-related disputes through arbitration, is not enforceable againstLeodori, the plaintiff-employee, where that employee did not sign a form agreeing to the provision and where the record contains no other clear evidence of his agreement to that waiver-of-rights provision.

49. **State v. Nishina**

175 N.J. 502 (2003)

Holding: Based on the totality of circumstances, the officer had a constitutional basis to stop and continue to question Nishina and to ask him for his drivers' license, registration, and insurance card. In addition, the pat-down search of Nishina's outer clothing is sustainable not as a Terry protective search, but as a search based on probable cause and exigency. Further, the officer's search of Nishina's car was valid under the automobile exception to the warrant requirement.

50. **A.B. and S.B.W. v. S.E.W.**

175 N.J. 588 (2003)

Holding: Plaintiff's motion to reopen a prior order denying her visitation with her former domestic partner's child was not erroneously denied by the trial court when the time for direct appeal had expired and the sole basis for plaintiff's motion was the Supreme Court's issuance of a potentially relevant decision more than a year and a half after the entry of the original visitation order.

51. **Flanigan v. Munson**

175 N.J. 597 (2003)

Holding: A constructive trust is the appropriate remedy under the facts of this case, where a property settlement agreement between the children's biological parents unambiguously established the children's right to insurance proceeds and the agreement expressly stated that it bound others, including executors and administrators.

52. **Mull v. Zeta Consumer Products**

176 N.J. 385 (2003)

Holding: Plaintiff's allegations, if proven, would satisfy the intentional wrong exception to the immunity from common-law suit provided by New Jersey's Workers' Compensation Act, and she is entitled to proceed in the Law Division with the action she filed against her employer for injuries sustained on the job.

53. **State v. David Summers**

176 N.J. 306 (2003)

Holding: The testimony of the State's expert did not infringe on the right of Summers to have a jury decide his guilt.

54. **State v. Holland**

176 N.J. 344 (2003)

Holding: Under the framework the Court has articulated here, the independent-source rule cannot sustain what otherwise was an impermissible search of defendant's home where the officers could not prove, by clear and convincing evidence, that they would have sought a search warrant independent of the tainted knowledge or evidence that they previously had acquired or viewed.

55. **Joye v. Hunterdon Central**

176 N.J. 568 (2003)

Holding: The School Board's random drug and alcohol testing program is permissible under Article I, paragraph 7 of the New Jersey Constitution.

56. **First American v. Lawson**

177 N.J. 125 (2003)

Holding: The firm's policy is void in respect of the firm as an entity and any defalcating partner, but not in respect of any innocent partner.

57. **State v. Perez**  
(2003)

Holding: The State submitted sufficient evidence to allow a reasonable jury to conclude that Perez was guilty of child luring and attempted child endangerment.

58. **State v. Sisler**  
177 N.J. 199 (2003)

Holding: Defendant's printing of child pornography from an Internet-based site for his sole personal use, as a matter of law, does not constitute "reproduction" of prohibited material under New Jersey's child endangerment statute, and defendant thus cannot be charged as a second-degree offender, which would expose him to a presumptive seven-year prison term.

## Concurring Opinions

1. **Abbamont v. Piscataway Board of Ed.**

163 N.J. 14 (1999)

Justice Verniero writes separately to emphasize that this Court's opinion has no precedential weight in subsequent cases involving the underlying issue of whether punitive damages are available against public entities under CEPA.

2. **Miller v. Sperling**

166 N.J. 370 (2001)

Justice Verniero writes separately to emphasize that nothing in the language of the Wrongful Death Act prevents the trial court from applying principles of causation and other tenets to this or any similar case.

3. **Reed v. Bojarski**

166 N.J. 89 (2001)

Justice Verniero expresses his view that the Court's holding does not require a physician performing examinations at the request of a third-party entity to discover or diagnose potential ailments beyond the scope of the third-party referral.

4. **Troy v. Rutgers**

168 N.J. 354 (2001)

Justice Verniero emphasizes that although the Court discusses the contours of Woolley, it did so only in the course of concluding that the doctrine of Woolley did not apply. He notes that the Court has never directly extended the requirements of that case to public employers. He further did not consider the Court's reliance on Shebar v. Sanyo Business Systems, Corp., 111 N.J. 276 (1988), to suggest that implied contracts may now be routinely recognized between public employers and employees.

5. **J.B. v. M.B.**

170 N.J. 9 (2001)

Justice Verniero joins in the disposition of this case, although he does not agree with the Court's suggestion, in *dicta*, that the right to procreate may depend on adoption as a consideration. He also expressed his view that the same principles that compel the outcome in this case would permit an infertile party to assert his or her right to use a preembryo against the objections of the other party, if such were the only means of procreation.

6. **Trinity Cemetery Association v. Township of Wall**

170 N.J. 39 (2001)

Justice Verniero writes separately to express his view that the 1995 ordinance restricting mausoleums is invalid on its face. He would thus conclude that the approval process should begin anew, regardless of whether deception is proved. That disposition would give the Township the opportunity to reevaluate Trinity's application and would serve to alert municipalities to avoid exceeding their statutory authority and to exercise care when adopting future ordinances.

7. **State v. Hernandez**

170 N.J. 106 (2001)

Justice Verniero expresses the view that the adequacy of the jury instruction is a close question, especially when considered under the plain-error standard.

8. **Ponte v. Overeem**

171 N.J. 46 (2002)

Justice Verniero concurs in the disposition of the Court solely on the basis that it complies with the standard articulated in Brooks v. Odom, 150 N.J. 395 (1997), which he believes in the appropriate standard to be applied in evaluating claims for non-economic damages against a public entity under the Tort Claims Act.

9. **State v. Rue**

175 N.J. 1 (2002)

Justice Verniero agrees with the Court's disposition based on the current text of Rule 3:22-6(d), but believes that the potential dilemma for PCR counsel posed by the Rule's apparent inconsistency with PRC 3.1 warrants further consideration of the rule in its current form. He believes that the Court should consider adopting procedures similar to those found at the federal level to enable defense counsel to discharge their obligations to their clients within the boundaries of the ethics rules.

10. **Crippen v. Central Jersey Concrete Pipe Co.**

176 N.J. 397 (2003)

Justice Verniero joins in the Court's opinion based on plaintiff's allegation that the defendant attempted to deceive federal regulators into believing that it abated certain safety violations prior to the date of decedent's death. If the jury finds, however, that the deception is not proven, he believes this case falls short of clearing the Workers' Compensation Bar.

11. **Warren County Community College v. Warren County Freeholders**

176 N.J. 432 (2003)

Justice Verniero agrees that Warren County's failure to gain public input when it established the county college rendered the Board of County Estimate without authority to act in the manner sought here.

12. **Lockley v. N.J. Dept. of Corrections**

177 N.J. 413 (2003)

Justice Verniero (with Justices LaVecchia and Albin) expresses the view that if the issue squarely had been raised, he would have been inclined to address whether Cavouti erroneously interpreted the LAD to permit punitive damages against public entities.

## **Dissenting Opinions**

1. **Aponte-Correa v. Allstate Insurance Company**

162 N.J. 318 (2000)

Justice Verniero believes that the majority opinion is at odds with the plain language of the statute in that its interpretation of the statutory construction of the statute runs counter to the rationale expressed in the unanimous opinion in Ochs v. Federal Insurance Co.

2. **Fleming v. Correctional Healthcare Solutions**

164 N.J. 90 (2000)

Justice Verniero agrees that an employee may not be lawfully discharged for blowing the whistle on a supervisor by lodging a CEPA complaint outside of the employer's chain-of-command structure, but is of the view that Fleming did not produce sufficient evidence to support the inference that she bypassed Simpson because Simpson was involved in wrongdoing or to establish that her termination was the result of her protected activity and not due to her refusal to follow instructions from Miers about the submission of complaints or for her refusal to follow orders in dispensing medication.

3. **Gilhooley v. County of Union**

164 N.J. 533 (2000)

Justice Verniero is of the view that the Court has taken a once-integrated standard and divides it into two prongs. In so doing, the Court places insufficient emphasis on the loss of bodily function and thereby alters the focus of the analysis in a manner inconsistent with the Tort Claims Act. The focus under both the statute and Brooks should be on the loss of bodily function, not the injury. Viewed from that perspective, Gilhooley's claim is insufficient because her bodily function (the use of her knees) has been fully restored. It is the role of the Legislature to lower the bar of the Act. Until the Legislature does so, the Act's high threshold should be enforced as it was in Brooks.

4. **Brower v. ICT**

164 N.J. 367 (2000)

Justice Verniero is of the view that, in the absence of the employer's business use or ownership of the rear stairway, an employee's idiosyncratic use does not support a finding that the stairway is an extension of the employer's premises. Further, an employer does not "control" a stairway merely because the employer refrains from taking action to disapprove an individual employee's selective use of that area. The plain words of the statute, prior case law, and public policy require that the judgment of the Appellate Division be affirmed.

5. **Planned Parenthood of Central New Jersey v. John Farmer**

165 N.J. 609 (2000)

Justice Verniero is of the view that the Parental Notification for Abortion Act does not unduly regulate or forbid any form of abortion procedure. He would remand the matter to permit the parties to develop a full record before invalidating the Act based on asserted flaws in the waiver process.

6. **Mahoney v. Podolnick**  
168 N.J. 202 (2001)

Justice Verniero is of the view that the trial court was deeply concerned by the jury's verdict and identified other problems concerning the first trial. The second verdict rendered by a different jury was apparently free of any juror confusion or similar error. In view of those problems concerning the first trial and verdict, he would not disturb the second verdict.

7. **Lash v. Lopez**  
169 N.J. 20 (2001)

Justice Verniero (with Justice LaVecchia) is of the view that a surety is not liable beyond its obligation under statute and the express terms of the bond. There is no provision in the bond or in any statute in New Jersey that provides that the surety may be surcharged for attorneys' fees. Neither tort principles nor general invocations of equitable principles should be relied on here to recast the obligation that the surety has undertaken its contractual obligation to restore the funds to the estate that were taken by the administrator.

8. **Aden v. Fortsh**  
169 N.J. 64 (2001)

Justice Verniero is of the view that the majority's holding relieves an insured from having to take the minimal step of reviewing a policy's one or two-page declarations sheet to avoid the kinds of injuries that occurred here. That approach dilutes the significance of the numerous cases in which courts have stressed the importance of having insurance policies written in clear, straightforward terms to aid policyholders in reading and understanding them. He would hold that in malpractice actions involving insurance agents, brokers, or similar parties, the trier of fact is generally required to determine the degree of an insured's negligence or fault in failing to read a policy's declarations page.

9. **Matsumoto v. Matsumoto**  
171 N.J. 110 (2002)

Justice Verniero disagrees with the majority's formulation of the standard to be used when deciding whether to apply the doctrine. Here, all aspects of the civil matter, including child custody issues, are linked to the outstanding warrants and pending criminal allegations. The record, therefore, justifies application of the doctrine. Defendants should not be permitted to simply post a bond to gain benefit of our civil courts while they continue to ignore the civil warrants and avoid answering the criminal indictment.

10. **Viviani v. Borough of Bogota**  
170 N.J. 452 (2002)

Justice Verniero would affirm the judgment of the Appellate Division substantially for the reasons expressed in its opinion. He would resolve this conflict in favor of the firefighter because he believes the Legislature intended the tenure provision to apply broadly, except in those instances marked by "widespread economic depression or mandatory retrenchment." N.J.S.A. 40A:14-65. He contends further that discerning the true intent of a municipality in abolishing an exempt fireman's position would require costly litigation and discovery.

11. **Kahrar v. Wallington**

171 N.J. 3 (2002)

Justice Verniero did not believe that Kahrar's proofs satisfied the Tort Claims Act's high threshold for recovery of non-economic damages under Brooks. He further believed that the Court had altered the analysis used to evaluate claims for non-economic damages against a public entity under the Tort Claims Act and that the approach employed in Brooks was more in keeping with the Act. Thus, he would have affirmed the Appellate Division's judgment.

12. **Torres v. The Travelers Indemnity Company**

171 N.J. 147 (2002)

Justice Verniero is of the view that the plaintiff did not "occupy" the insured vehicle at the time of the accident as that term is understood in the everyday, commonly understood sense of things.

13. **Velazquez v. Jiminez**

172 N.J. 240 (2002)

Justice Verniero believes that under the statute as written, a health-care professional in a hospital who does not otherwise have a duty to act is entitled to the same Good Samaritan protections as any other person. In his view, the proper disposition would have been to remand the matter to the Law Division to evaluate whether any physician agreements, hospital protocols, or regulations require a broad imposition of a duty in these circumstances. Absent such a remand, Justice Verniero would interpret the Good Samaritan Act consistent with what he discerns as the legislative purpose – to ensure that as many persons as possible respond to a patient's emergent needs.

14. **Carpenter Technology v. Admiral Insurance**

172 N.J. 504 (2002)

Justice Verniero believes that the plain language of the Act entitles NJPLIGA to a credit only for the amounts actually received by the insured from PPCIGA. He believes that the majority's holding is at odds with the Act's clear goal of protecting insureds from the inequities and hardships caused by insurance company insolvencies and with the need to fund an environmental clean-up plan for the New Jersey sites.

15. **Weinberg v. Sprint Corporation**

173 N.J. 281 (2002)

Justice Verniero would not rely on the filed-rate doctrine to dismiss Weinberg's consumer protection claims. In his view, the public policy behind the Consumer Fraud Act argues in favor of allowing those claims to proceed to trial. According to Justice Verniero, Sprint should not be permitted to benefit from the protections of the filed-rate doctrine given the content of its filed tariffs, which did not explicitly disclose its "round-up" practice. In addition, Justice Verniero would not apply a legal fiction whose future is dim, at best. Absent the doctrine, Weinberg likely has an ascertainable loss or at least is entitled to prove such a loss at trial. Furthermore, allowing the claim to proceed would be consistent with the Act's history of expanding consumer protection in these circumstances.

16. **Bi-County Development of Clinton v. Borough of High Bridge**

174 N.J. 301 (2002)

Justice Verniero believes that the Court's holding limits a municipality's flexibility in addressing its Mount Laurel obligations. He further believes that High Bridge has a regional obligation to assist in a neighboring inclusionary development so long as such assistance presents no detriment or burden to High Bridge or to its taxpayers. Thus, he would permit Bi-County to connect to the High Bridge system so long as that connection does not burden that system or otherwise affect High Bridge's current or future needs, and would remand for a full hearing to explore those issues.

17. **Shaw v. City of Jersey City**

174 N.J. 567 (2002)

Justice Verniero disagrees with the majority's analogy to the UCJF and he would apply the commonly-understood meaning of the term "accident" to determine uninsured motorist coverage. He agrees with both the dictum expressed in Lindstrom and the Appellate Division's judgment in this matter.

18. **Reck v. Division of Taxation**

175 N.J. 54 (2002)

Justice Verniero (with Justice Long) would reverse the judgment of the Appellate Division substantially for the reasons expressed by the Tax Court, Reck v. Director, Div. of Taxation, 18 N.J. 598 (Tax 2000).

19. **Lonegan v. State of New Jersey**

176 N.J. 2 (2003)

Justice Verniero (with Justices Long and Zazzali) is of the view that the Debt Limitation Clause is applicable to any legislative enactment that binds the State, either by design or by indirect result, to the payment of incurred debt out of general revenues. He would hold that the Debt Limitation Clause is violated when the Legislature, without voter approval, enacts legislation authorizing an authority or other State entity to borrow money or otherwise incur indebtedness, in excess of the threshold set forth in the Clause, that is (1) unsupported by adequate revenues that are independent of taxpayer funds, and (2) amortized primarily or completely by annual legislative appropriations. Excluded from that holding would be labor agreements, leases, and any other arrangement or transaction that does not require the State's contractual borrowing of funds.

20. **D.L. Real Estate v. Point Pleasant**

176 N.J. 126 (2003)

Justice Verniero is of the view that, based on the premise that the Legislature designed the MLUL to "require consistency, uniformity, and predictability in the subdivision-approval process," a better reading of the statute is that, without an explicit statutory grant of authority, municipalities cannot limit an applicant's preliminary subdivision approval in the manner sought here.

21. **Knowles v. Mantua Township**

176 N.J. 324 (2003)

Justice Verniero stated that plaintiff's injuries do not satisfy the TCA's high threshold for recovery; that plaintiff's circumstances are similar to those encountered by the Brooks claimant and, therefore, warrant the same result: no award for non-economic damages.

22. **Parks v. Rogers**

176 N.J. 491 (2003)

Justice Verniero would have concluded, in applying the standard the Court affirmed in Tighe v. Peterson, 175 N.J. 240 (2002), that the staircase's lack of illumination and its abbreviated banister either were known to plaintiff or were conditions that plaintiff would have observed by reasonable use of the facilities. Thus, Justice Verniero would have considered this case ripe for disposition and would have affirmed the judgment of the Appellate Division.

23. **Guichardo v. Rubinfeld**

177 N.J. 45 (2003)

Justice Verniero believes that plaintiff's cause of action against Dr. DeLisi accrued in October 1992 on the basis of Dr. Rubinfeld's statement regarding the delay in her surgery. He further believes that the majority's holding departs from established law and that the Court's rationale will leave lower courts with little choice in the application of the discovery rule, resulting in receipt of an expert report as the triggering mechanism in all medical malpractice actions.

24. **McNeil v. Legislative Apportionment**

177 N.J. 364 (2003)

Justice Verniero (with Justice Albin) stated that on the present record, he could not determine the validity of the 2001 apportionment plan. He would remand the matter to the Law Division, giving the current map a presumption of validity. The challengers should have an opportunity to demonstrate, with substantial certainty, whether an alternative apportionment plan can pass muster under federal law consistent with the New Jersey Constitution.

25. **Green v. Jersey City Bd. of Ed.**

177 N.J. 434 (2003)

Justice Verniero (with Justices LaVecchia and Albin) expresses the view that the State's presumptive immunity from punitive damage awards can be breached only by a clear and unmistakable pronouncement by the Legislature. Such a pronouncement is not found in CEPA.

## **Concurring/Dissenting Opinions**

### **1. Riding v. Towne Mills Craft Center**

166 N.J. 222 (2001)

Justice Verniero agrees with the underlying premise of the Court's holding, namely that plaintiffs who successfully arbitrate their discrimination complaints are entitled to seek reasonable counsel fees. He differs from the majority on how to implement that holding. He is of the view that the Court should encourage arbitrators to resolve fee applications rather than reserve that function exclusively for the Law Division unless the parties agree otherwise.

### **2. Schick v. Ferolito**

167 N.J. 7 (2001)

Justice Verniero concurs with the majority's adoption of the recklessness standard in recreational sporting contexts, including golf; he dissents from the majority's determination that a jury could find defendant's conduct sufficiently egregious to satisfy the recklessness standard.

### **3. Department of Corrections v. IFPTE**

169 N.J. 505 (2001)

Justice Verniero joins in the Court's elimination of the no work, no pay rule from our common law. However, he agrees with Justice LaVecchia's analysis in respect of the meaning of "permitted by law" as the phrase is used in the Agreement. Under our tripartite system, executive agencies may act only by virtue of an expressed or implied grant of authority from a legislative enactment or constitutional provision, or a judicial directive interpreting either of those sources. Unlike the majority, he does not find an expressed or implied grant of authority to permit a back-pay award in this setting.

### **4. Shelcusky v. Garjulio**

172 N.J. 185 (2002)

Justice Verniero agrees with that portion of the Court's opinion incorporating the sham-affidavit doctrine into the State's jurisprudence. According to Justice Verniero, the proper inquiry is not whether Shelcusky submitted a sham affidavit but whether the existing pleadings, depositions, and certifications create a jury question in respect of whether the lack of warning on the forklift was the proximate cause of Shelcusky's injuries. Because no reasonable jury could find proximate causation on the record presented, Justice Verniero respectfully dissents from the majority's ultimate disposition.

### **5. Reynolds v. Gonzalez**

172 N.J. 266 (2002)

Justice Verniero (with Justice LaVecchia) concurs in that part of the Court's opinion modifying the instruction on substantial factor causation in increased risk cases, but does not believe that a third trial is warranted in this case.

### **6. State v. Franklin**

175 N.J. 456 (2003)

Justice Verniero agrees with the holding that applies gap-time credit to time served on a juvenile sentence, but concludes that an award of gap-time credit to a defendant in the face of parole revocation constitutes an unwarranted benefit not contemplated by the Legislature.

7.     **Moriarty v. Bradt**  
          177 N.J. 84     (2003)

Justice Verniero agrees that a fit parent's decision regarding his or her child's visitation with a non-parent can be overridden only by evidence of demonstrable physical or psychological harm to the child. However, he believes that the movant must establish such harm by clear and convincing proof, and he would remand the matter to the trial court to determine whether that standard was satisfied.

**TOTAL OPINIONS: 102 (as of 9/30/03)**